

The comments below were received verbally during the three meetings (Liaison Committee, OPSI and MRC) that were specifically scheduled to do so and have been summarized by David Mills, PJM Board.

Overarching comments: Commenters agreed on the need for and importance of a strong and independent MMU. Stakeholders envision the next six years will be challenging for PJM, its Members and the IMM as the clean energy transformation unfolds. Commenters generally feel that the IMM structure has provided value to the markets, and that the IMM role must continue to ensure the markets are not subject to undue influence. There was concern expressed by some but not agreed to by others that, as structured, the IMM is both rule-maker and enforcer of those rules, and that an IMM should be agnostic on market design and not permitted to present competing market design proposals in the stakeholder process.

A. Comments Related to Contract Terms and Conditions

Intellectual Property:

- PJM needs license to all IMM intellectual property. Absent this, there is never a pathway to a new IMM. The IMM should be fairly compensated for the intellectual property it developed.

Succession Planning:

- Dr. Bowring is widely recognized as “the” market monitor, and several commenters believe there is an increasing risk that Dr. Bowring will retire within the next several years. There is a need to include clearer language in contracts regarding succession in the event of market monitor retirement mid-contract cycle.

Data Access:

- Rate Schedule section 8 is clear that data ownership stays with PJM.
- There is a need to address the ownership and eventual disposition of market participant data. This data is of significant value and must be retained by PJM and its Members regardless of current IMM. Most commenters maintained the IMM should be fairly compensated for data it developed.

Need for Improved Definitions:

- **Market Power:** Some commenters felt that the term “Market Power” is not adequately defined in the existing contract and would benefit from some review and revision.
- **Data Transfer Obligations:** Some commenters expressed concern regarding the transfer and disposition of market participant data in the event of a change in the IMM.

B. Other Comments

RFP for IMM Services:

Commenters were split on preference of whether the Board should issue an RFP for the next IMM contract.

Those proposing that PJM use an RFP for the IMM for the next contract period supported that position with the following points:

- Market challenges are accelerating. Nothing should be considered sacrosanct, including the scope, quality and price of the IMM contract.
- How can the Board ensure that IMM services are being acquired at a fair and reasonable cost without issuing a competitive RFP?
- If RFP issued, PJM needs to ensure that the full suite of MMU services provided today are maintained.

Stakeholders opposing the Board issuing an RFP for IMM services stated the following:

- There is value in maintaining the stability in the IMM position.
- The current IMM has history and understands the PJM markets.
- The current contract should be renegotiated and extended (for at least six years).
- It is time to make the IMM a permanent feature of PJM, so there is no political stuff around renewal.

Third-Party Review of IMM Performance:

Some commenters argued that the Board should use a third party to review the IMM's performance, while other commenters didn't think this was necessary or advisable. Those who did support this made the following points:

- The terms "Adequacy" and "Quality" as used in Section 27 of the MMUSA are required to be part of the Board's assessment of IMM performance but are nebulous terms.
- Section 27 of the MMUSA provisions allows for the use of outside/third-party evaluation/review of the IMM's performance. Federal regulations and the Tariff set out the IMM requirements, but the Board is to determine whether the IMM is performing adequately and of appropriate quality. Third-party review would be valuable in doing so.
- Request the Board engage an independent panel of economists to assess the IMM's work in energy and capacity markets, including stakeholder process proposals and FERC filings:
 - Has the IMM work promoted fair and efficient markets?
 - Have the IMM's recommendations concentrated the IMM's power such that the IMM sits at the top of the stack in design and monitoring?

Scope of MMU:

Market Design

- The IMM should be prohibited from developing new, competing market design proposals but rather limited to opining upon those emerging from the stakeholder process. The IMM role should not be both ruler-maker and policeman. Failure to separate these roles leads to the appearance of possible market power of the IMM when it comes to assessing market performance. We like to see a very narrow role limited to market power and mitigation.

Internal Market Monitor:

- PJM should augment breadth of market monitoring by adding an internal market monitoring unit.

Concerns of Board Mid-Year of IMM Contract

- Numerous commenters expressed concern that the Board's mid-cycle review of the IMM's contract is inappropriate and felt "menacing" to the IMM.

Comments Received by Board Liaison on MMU Contract

Summary by Dr. Jonathan Raab – Liaison Between the Members and Board on Matters Related to MMU

Note: Dr. Raab received two sets of comments. The recommendations and comments for each set of comments received are summarized below – each in two parts with the first focused specifically on recommendations/comments directly related to the contents of the Independent Market Monitor contracts and the second related to other related recommendations/comments. For some comments/recommendations where a commenter provided additional rationale, that is also summarized.

Summary of Recommendations/Comments From Commenter(s) A

A) Contract-Related Recommendations/Comments:

Improve Transparency and Accountability – Clearly define the Independent Market Monitor’s (IMM’s) PJM RTO responsibilities, PJM RTO obligations, and PJM RTO reporting relationships. Specifically:

- **Data Access: Proprietary Calculators (46: 8.2)** – All IMM-derived calculator equations should be posted such that Members and PJM staff can independently replicate IMM outcomes.
- **Financials & Budgeting (46: 5.1, 11.3 & 15)** – The IMM should provide PJM and stakeholders with details and reporting frequency, equivalent to how PJM shares its information with stakeholders as a normal course of business. Also, the contract should be clear with respect to the annual IMM budget review. Specifically, the IMM should be obligated to share YTD actual expenditures during the budget review process, and not rely on a “forecast” where it is unclear what the component pieces (YTD actuals and balance of year forecast) are.
- **No Prohibited Engagements: External Activities (46: 11.5)** – The contract should establish new transparency protocols related to the IMM’s engagement in external activities, including in state proceedings and in non-PJM regions. Specifically, the IMM should only engage when requested by a specific regulatory body or legislator. In addition, reports and analysis provided in these instances should be published to the IMM website including specific details on how any report was developed and where/how it was requested. The IMM should also draft a monthly summary of all of these activities and distribute it to the membership.
- **Add Definitions for Key Market Monitoring Services** – The next contract should include clear definitions, specifically about:
 - **Exclusivity:** That the Agreement is exclusively for PJM-related RTO market monitoring services.
 - **Market Power:** Term needs to be defined in the contract, so that there is no variability in interpretations from issue to issue or participant to participant.
 - **Data Transfer Rights and Obligations:** Contract should establish guidelines for what data the IMM can access or demand. There are no current limits on information requests of Members nor of PJM.

Code of Conduct (46: 11.4 & 18.1) – The contract should include a code of conduct that requires strict independence from all parties engaged in the PJM stakeholder process inclusive of state commissions.

Rationale: Traditionally, the IMM function has been independent from PJM and the PJM Board. However, the IMM must also be independent from stakeholder groups, which has been a concern as the IMM often carries the mantle of “consumer interest.” It is not the IMM’s role to be an advocate for consumer interests as the PJM Members already fund another organization for that specific purpose. Also, many of the state commissions appear to rely on the IMM for analysis

and expertise. The contract needs to include more specifics on when this may be appropriate and when it is not.

IMM Role in Stakeholder Deliberations (46: 28) – The contract should establish a clear role in the PJM stakeholder Consensus Building Issue Resolution (CBIR) process. We believe that it is inappropriate to have the same entity influence market design and also monitor market rule efficacy.

Rationale: Having respective PJM and IMM views on every single rule change is inappropriate and overly burdensome to the entire PJM membership. In addition, the contract should be crystal clear on the areas of acceptable engagement by the IMM. M-34 and the stakeholder process are owned by the Members, and the IMM should not be involved in discussions at the Stakeholder Process Forum. PJM’s involvement in that area is for facilitation only. Also, the IMM should not play a role in transmission planning. PJM is the independent system planner, and the IMM has no expertise in that area. Proposals offered by the IMM in this space have been counterproductive and ignore all legal and contractual precedent in the CTOA.

Succession Plan and Termination Terms for Monitoring Analytics or Any Future IMM (46: 33) – The termination terms in Attachment M built in checks and balances and more accountability on the IMM. However, the current termination clause is overly generous to the IMM and should be restructured.

B) Other Recommendations/Comments:

- **IMM Contract** – We recommend that PJM use an RFP and open the IMM contract up to a competitive bid. This should not be a contract adjustment sole sourced to Monitoring Analytics.
- **Ownership and Disposition of Member Data** – PJM should decide who owns the Member data held by the IMM when a contract expires. What is the market value of all the PJM proprietary information and market data on every market participant including their most proprietary business information?
- **Establishing a Mechanism To Provide Member Feedback** – Because the LC is a forum where discussion is limited to sector views only, we suggest that the Board also be open to written feedback from individual Members on the IMM contract. The Board should establish a mechanism to receive that feedback.

Summary of Recommendations/Comments From Commenter(s) B

A) Contract-Related Recommendations/Comments:

Data Access (46: 8) – The IMM should have the ability to obtain from PJM and from all market participants the data, information and documentation necessary to ensure that all service provided by PJM (transmission service, market outcomes, transmission planning) is “reliable, efficient and not unduly discriminatory.” Data-sharing should not impair the IMM’s independence. Specifically:

- a. The IMM should have access to all PJM data, including planning data.
- b. PJM should not have full access to all IMM data. The IMM should provide data only as necessary for PJM to understand the IMM’s conclusions, analyses, findings or recommendations.
- c. Market participants do not have rights to “their” data; that information should reside with the IMM function.

Budget Review (46: 15) – The process for considering the IMM budget is defined in Attachment M. That process should continue to be followed. Importantly, PJM, the PJM Board, the Finance Committee, the PJM Members and the OPSI Advisory Committee do not have final decisional authority over the IMM budget. The process should not be used, or abused, to exercise influence over the IMM.

B) Other Recommendations/Comments:

- **IMM Contract Renewal:** The PJM Board should not use its discretion to issue an RFP but begin discussions with OPSI and Monitoring Analytics about an extension of the MMSA, with the refinements and clarifications discussed above (pertaining to data access and budget review), as well as any other refinements and clarifications that are deemed necessary by the negotiating parties. We value stability and continuity in the market monitoring function, and urge the Board to negotiate an extension of the contract with the current IMM prior to the fall of 2024, rather than issue an RFP. Any new MMSA that is able to be negotiated among the PJM Board, OPSI and Monitoring Analytics should include a new term of no less than six years.

Rationale/Background: PJM is in the midst of historic levels of transition in terms of the markets it administers, the generation resource fuel mix available to meet demand, and the infrastructure needed to accommodate new resources as current generation resources are exiting the market. A key element to PJM’s successful navigation through this transition period is the availability of a capable and experienced IMM that is an expert in PJM’s market rules and existing regulatory structure and that possesses an extensive track record of having served in that capacity independently. PJM’s current IMM, Monitoring Analytics, meets all essential requirements to

continue to serve in that capacity and fulfill the market monitoring obligations required by FERC. Moreover, the IMM has not engaged in “willful misconduct or gross negligence” or “has not adequately performed its functions.” Market manipulation, efforts to undermine competitive markets, and efforts to move market design in a direction opposite from customers’ interests are all real.



Organization of PJM States, Inc. (OPSI)

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May 5, 2023

David E. Mills
Chair, Competitive Markets Committee
Dr. Jonathan Raab
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Dear Mr. Mills and Dr. Raab,

Thank you for your participation in the OPSI Advisory Committee (AC) meeting on April 18, 2023, and for the transparency into the PJM Board's effort to seek feedback from stakeholders related to the Independent Market Monitor's (IMM's) Contract. The Board's effort was communicated to stakeholders via Mr. Mills' letter dated March 6, 2023. Specifically, the letter requested feedback on the IMM's contractual terms and service agreement, including, budget, data confidentiality, ownership of intellectual property, and succession planning. The letter further stated that the Board was not seeking input on the scope of the IMM's duties or performance.

At the AC meeting, Mr. Mills reiterated the intended scope of the PJM Board's review and stressed that it in no way related to duties or performance of the IMM. Despite this clear delineation of the type of limited feedback sought by the Board, the AC understands that through soliciting feedback from stakeholders, many comments received fell outside of the intended scope of interest.

In keeping with Mr. Mills' assurances that comments outside of the scope of the specified topics will not be considered for any near-term action, and to help the PJM Board focus on the issue at hand, the AC will limit its comments accordingly. Should the Board feel the need to open an investigation into the IMM's performance and scope of duties, we trust that any such action would be formally announced and that any consideration and ultimate action stemming from that input would be conducted through a clear and transparent process.

Budget

The AC acknowledges and appreciates the PJM Board's continued support for a strong, robust, and independent Market Monitor. The AC agrees with the Board that the IMM's ability to function

independently is absolutely essential to ensuring that the PJM market remain competitive, non-discriminatory, and free of market manipulation. As stated in previous communications with Mr. Mills,¹ the AC is concerned about any move to circumvent this independence by efforts to unreasonably restrict the IMM's budget. The IMM budget should hold sufficient funds to enable the IMM to fully engage and participate with stakeholders through various proceedings, including any and all emergency proceedings as they arise at PJM. As articulated in the AC's letter dated November 28, 2022, unnecessary restrictions on the IMM's budget will ultimately cost all stakeholders in the long run if the IMM is forced to balance his efforts based on limited funds. The PJM Board should continue to make all efforts to uphold the IMM's independence and maintain its current contractual budgeting and reporting practices, in accordance with Schedule M.

Property Rights and Succession Planning

Initially, as it relates to contractual terms, none of the comments herein should be construed as advocating for amendments to the current contract between Monitoring Analytics and PJM. The current contract is silent on the IMM's intellectual property. However, it is clear that the IMM developed its intellectual property to carry out the independent reviews and analyses entrusted to it under a contract within its approved budget, but it is not implied that this material belongs to PJM rather than the IMM. In no instance should the IMM be expected to relinquish its intellectual property rights (IPRs) at some later date without receiving full compensation for its value. The AC appreciates comments raised with concern that retaining ownership of such intellectual property may guarantee Monitoring Analytics as the IMM in perpetuity. The AC also understands the unique position that Monitoring Analytics holds given its ownership of intellectual property that is likely necessary to perform the market monitoring function in PJM, generally, and equally appreciates the IMM's desire to maintain its own property. The AC believes that greater contractual clarity regarding intellectual property rights may be beneficial in the event an IMM no longer provides market monitoring services, including ensuring that the IMM's intellectual property is fully valued and compensated. Any such future contract contemplated by the Board can rightfully include contract terms specifying a formal process for the transfer of intellectual property in the event of contract termination. Additionally, any future Board action around addressing stakeholder concerns regarding IPRs must fully weigh the intricate nature of succession planning and intellectual property rights. Should the Board wish to discuss IPRs in relation to development of a succession plan, the AC would avail itself in providing counsel.

Monitoring Analytics offers true value to stakeholders, including the institutional knowledge from being PJM's first and only IMM. Much of that benefit is provided to stakeholders through active participation in the stakeholder process, engagement with OPSI and the consumer advocates, consistent analysis and modeling which produces data that is easily comparable year-over-year, and which is adjusted as market rules evolve. Joe Bowring has advocated for Monitoring Analytics' contract to be indefinite, rather than on defined length terms; he offers this as a solution to both the intellectual property rights concern and the succession planning effort. While the AC is not ready to take a position on an evergreen contract, noting however that any discussion regarding Requests for Proposals for future market monitoring services is explicitly outside the scope of this investigation and thus comments on the issue should be summarily dismissed, we do urge the PJM Board to consider the integral relationship between intellectual property rights and succession planning in discussions on future contracts.

General Concerns

In addition to the areas in which feedback was requested, the AC must express concern for the very nature of this process, which was initiated midway through the IMM's current contract. Depending on the feedback

¹ OPSI Advisory Committee Letter to David Mills, dated November 28, 2023.

it receives, the PJM Board may ultimately decide that it must attempt negotiations with the IMM to amend the contract. While the AC appreciates the Board's intent to appropriately respond to stakeholder concerns and to perform its due diligence, this timing creates a concern that the IMM will feel political pressure to accept any proposed contractual amendments in order to have a better chance of contract renewal. Or, if the IMM rejects such amendments, this increases the likelihood the PJM Board will choose a different direction at the end of this term. If nothing else, much of the feedback received by the PJM Board to this point in the investigation vindicates our concerns at the outset – stakeholders hostile to the current IMM will use the opportunity provided by the investigation to advance their interests in ways contrary to the rules set forth by the PJM Board. Given this inappropriate engagement by stakeholders, we ask the PJM Board to steadfastly maintain its intended direction in initiating this endeavor, even if contrary to the comments and expectations some stakeholders have expressed.

The AC both appreciates and supports the PJM Board's acceptance of written comments especially for stakeholders who did not want to provide feedback in a public forum. However, the AC would also appreciate further transparency as this effort moves forward and would benefit greatly from another summary of the written comments received. The AC hereby requests that Mr. Mills report such information to the AC and allow for proper deliberation, prior to any future Board action that derives from this effort.

We appreciate our continued dialogue on all matters related to the IMM. We take our FERC-approved role in these matters seriously and look forward to continued engagement.

Sincerely,



Joseph L. Fiordaliso
Chair
OPSI Advisory Committee